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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the Matter of

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Amendment of Section 73.202(b)

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Table of Allotments

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MM Docket No.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FM Broadcast Stations

)

RM -

(Ardmore, Brilliant, Gadsden, Moundville,

)

Pleasant Grove, Scottsboro, Trussville,

)

Tuscaloosa and Winfield, Alabama,

)

Columbus and Okolona, Mississippi,

)

McMinnville, Pulaski and Walden, Tennessee)

)

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Respectfully Submitted,

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JACOR LICENSEE OF LOUISVILLE II, INC.

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October 6, 2000

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SUMMARY

This Petition for Rule Making is filed on behalf of Capstar TX Limited Partnership, and Jacor Licensee of Louisville II, Inc., (“Joint Parties”). The Joint Parties request certain changes to the FM Table of Allotments that will result in six communities, Pleasant Grove, Brilliant, Moundville, and Ardmore, Alabama; Okolona, Mississippi; and Walden, Tennessee receiving their first local service. Four communities will receive upgraded facilities and new service will be provided to substantial areas and population. All loss areas will continue to receive adequate aural service.

In order to make these improvements, only two other stations will be required to change channel and/or transmitter site. However each affected licensee has provided a statement consenting to the proposed changes, and therefore this counterproposal requires no involuntary changes for its implementation. Capstar TX Limited Partnership has entered into agreements to reimburse all affected licensees to ensure that the changes will be implemented in a smooth and orderly manner.

Accordingly, for the reasons set forth herein the Joint Parties urge the Commission to issue a Notice of Proposed Rule Making looking toward the ultimate grant of the Petition.

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WASHINGTON, DC 20554

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Amendment of Section 73.202(b))	
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FM Broadcast Stations)	RM -
(Ardmore, Brilliant, Gadsden, Moundville,)	
Pleasant Grove, Scottsboro, Trussville,)	
Tuscaloosa and Winfield, Alabama,)	
Columbus and Okolona, Mississippi,)	
McMinnville, Pulaski and Walden, Tennessee))	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Capstar TX Limited Partnership ("Capstar"), licensee of Stations WQEN(FM), Gadsden, Alabama, WENN(FM), Trussville, Alabama, and WRTR(FM), Tuscaloosa, Alabama, jointly with Jacor Licensee of Louisville II, Inc. ("Jacor"), licensee of Station WTRZ-FM, McMinnville, Tennessee (the "Joint Parties"), by their counsel, hereby submit this Petition for Rule Making. Clear Channel desires to improve its three stations by changing community of license and/or upgrading the stations' facilities. Jacor also seeks to improve its station in a similar manner. Six interrelated proposals are offered for consideration as follows:

- (1) Station WENN changes community of license from Trussville to Pleasant Grove, Alabama, upgrades from Channel 290A to Channel 288C3 and provides a first local service.
- (2) Station WQEN changes community of license from Gadsden to Trussville, Alabama on Channel 279C1 as a first local service.
- (3) Station WACR changes community of license from Columbus to Okolona, Mississippi on Channel 280C2 and provides a first local service.

- (4) Station WKSX changes community of license from Pulaski, Tennessee to Ardmore, Alabama, upgrades from Class A to C1 on Channel 252 and provides a first local service.
- (5) Station WTRZ changes community of license from McMinnville to Walden, Tennessee, upgrades from Channel 280A to Channel 279C3 and provides a first local service.
- (6) Station WRTR changes community of license from Tuscaloosa to Moundville, Alabama on Channel 290A.

In order to accomplish these changes, only two other stations have agreed to either relocate their transmitter site reference point or change channels. In support hereof, the Joint Parties state as follows:

I. Preliminary Matters

1. The Joint Parties offer for Commission consideration six interrelated proposals to improve their station facilities by either providing a first local service or upgrading to a higher class channel to serve more population. Clear Channel has entered into agreements with all of the affected stations to reimburse each for their facility changes in order to present a proposal which will be easy to implement. The proposal complies with the Commission's policy set forth in Columbus, Nebraska, 59 RR 2d 1185 (1986) in that all affected stations have submitted consent statements in Exhibit 1. See e.g., Farmersville, Texas, et al., 12 FCC Rcd 4099 (1997), recons. dismissed, 12 FCC Rcd 12056 (1997).

2. The Joint Parties hereby state that, in accordance with Section 1.420(j) of the Commission's Rules, they have not paid nor promised to pay, in any of the agreements or otherwise, any licensee or permittee for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application.

II. Station WENN(FM), Trussville/Pleasant Grove, Alabama

A. Technical Compliance

3. As indicated in the attached Engineering Statement, WENN can be upgraded from Channel 290A to Channel 288C3 and reallocated to Pleasant Grove, Alabama as its first local service in compliance with the Commission's spacing rules. See Exhibit E, Figures 1 & 2. In order to effectuate this proposal, it will be necessary to relocate Station WRTR, Tuscaloosa, change channels and community of license to Moundville, Alabama which is proposed herein. Clear Channel hereby states that it will file an application for a new transmitter site to serve Pleasant Grove should the Commission grant this proposal and it will construct the facility if its application is granted.

B. Community of License

4. In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License"), 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to change community of license the proposed channel must be mutually exclusive with the existing channel and the new community must be preferred over the existing community under the Commission's allotment priorities. The proposed use of Channel 288C3 at Pleasant Grove conflicts with the current use of Channel 290A at Trussville for WENN. See Figure 1. Trussville will retain local service from Class C1 Station WQEN as proposed herein. Thus a first local service to Pleasant Grove (population 8,458) (Priority 3), is preferable to the retention of WENN at Trussville (population 8,266) (Priority 4).

5. Trussville is located within the Birmingham Urbanized Area. Thus, the move to Pleasant Grove, also within the Birmingham Urbanized Area, does not take on the same significance with respect to the Commission's concern for the migration of stations from rural to urban areas. See e.g., Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (1996) and Long Beach and East Los

Angeles, California, 10 FCC Rcd 2864 (1995). Nevertheless, the following information is provided to demonstrate the independence and need for local service at Pleasant Grove based on the factors set forth in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) supra. As shown below, Pleasant Grove clearly satisfies the eight Tuck factors, and accordingly the Commission should consider Pleasant Grove to be independent from Birmingham.

6. The Commission considers eight factors when determining whether a particular community qualifies as independent, as follows: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book or zip code; (6) whether the community has its own commercial establishments, health facilities and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the smaller community relies upon the larger metropolitan area for various municipal services, such as police, fire protection, schools and libraries. Tuck, supra ¶ 36.

- (1) *There are Sufficient Employment Opportunities in Pleasant Grove for its Residents, and a Substantial Percentage of Residents Work in Pleasant Grove.*

7. Dozens of businesses in Pleasant Grove employ a total of approximately 760 persons. These employers include various retail establishments like Creative Decor, CVS Pharmacy, Just For You Balloons & Gifts, home maintenance and repair businesses like Mandy Plumbing Co., Triple B Plumbing Co., and Prantl Heating & Air Conditioning, restaurants like Subway, Paul's Bar-B-Que

and Dot's Restaurant, and various professional service offices like State Farm Insurance. See Exhibit 2.

8. According to the most recent available census data, 10.0% of Pleasant Grove's workers over the age of sixteen work within the town's limits. See e.g., Coolidge and Gilbert, Az, supra.

(2) *Pleasant Grove is Served by a Local Newspaper, and Has Other Media Available to Address the Town's Local Needs and Issues.*

9. Although published in nearby Bessemer, the *Western Star* provides weekly coverage of local news and issues for several communities west of Birmingham, including Pleasant Grove. In addition, the City of Pleasant Grove operates a comprehensive web site PGOnline (<www.pgonline.net>), which contains a substantial amount of information about the Pleasant Grove municipal government. In particular, the site provides users with recent press releases from the city, the dates and locations of upcoming meetings of various municipal boards and commissions, and the minutes of the most recent city council meeting. See Exhibit 2.

(3) *Pleasant Grove Residents Consider the Community Separate from Birmingham.*

10. Several factors indicate that the residents of Pleasant Grove consider their town to be independent of Birmingham. First, the people of Pleasant Grove, through the Town Council and the town's Economic Development Board, have made a substantial effort to promote the commercial and industrial development of their town, independent of Birmingham. In particular, the town promotes its family-friendly environment and relatively low business tax rates in an effort to encourage businesses to relocate.

11. In addition, Pleasant Grove has a separate historical identity from its larger neighbor. The area that is now Pleasant Grove was first homesteaded in September, 1836. The origin of the town's name is unknown; it appeared in official documents as early as 1884. The town incorporated

in 1934 – earlier than most municipalities of its size in the region. It did so in order to obtain federal financing for the construction of its water system. At the time, town residents could no longer rely on well water for their water supply because the water often drained away into the coal mines on which the town rests. See Exhibit 2.

(4) *Pleasant Grove has its Own Local Government and Elected Officials.*

12. Pleasant Grove is governed by a Mayor and five town Councilmembers who serve five-year terms. The Mayor and Council oversee the town's staff, who in turn operate the Pleasant Grove Library, the Offices of Building Inspections and Public Works, the City Clerk's office, and the Pleasant Grove Police and Fire Departments, which are led by the town's Director of Public Safety. The Mayor and Councilmembers also serve on the town's Economic Development Board, Industrial Development Board, and Commercial Development Authority, which work to encourage Pleasant Grove's long-term growth and economic well-being. In addition, Pleasant Grove operates its own municipal court, where a presiding judge and two magistrates hear traffic violation cases and all misdemeanor charges that arise within the town's limits. See Exhibit 2.

(5) *Pleasant Grove has its Own Zip Code.*

13. Zip code 35127 is associated exclusively with Pleasant Grove. See Exhibit 2.

(6) *Pleasant Grove is Home to a Substantial Number of Local Businesses, and has its Own Health Facilities.*

14. Pleasant Grove is home to dozens of businesses, a number of which identify with the community by using "Pleasant Grove" in their name: Pleasant Grove Flea Market, Pleasant Grove Florist, Pleasant Grove Hardware, Pleasant Grove Gun Supply, and Pleasant Grove Tire Co. In addition, Colonial Bank and Union State Bank operate branches within the town.

15. Pleasant Grove does not have its own hospital, but a number of doctors have established practices within the town, including several family practitioners, general practitioners,

dentists, and a chiropractor. In addition, two retirement communities, Pleasant Grove Health Care and Pleasant Villa Retirement Home, are available to members of the Pleasant Grove elderly community who require such care. See Exhibit 2.

- (7) *Businesses Can Advertise Directly to Pleasant Grove Residents without Using the Birmingham Media.*

16. As noted above, businesses interested in reaching Pleasant Grove residents may do so by advertising in places other than the major Birmingham media outlets, specifically the *Western Star* weekly newspaper. See Exhibit 2.

- (8) *Pleasant Grove Provides its Own Municipal Services; It Does not Receive These Services From Birmingham.*

17. The Town of Pleasant Grove, and not Birmingham, provides all municipal services to Pleasant Grove residents. Pleasant Grove purchases its power from Alabama Power and the TVA, and receives its natural gas from Southern Natural Gas Corporation and Transcontinental Gas Corporation. The town operates its own police force of fourteen sworn officers and 5 civilian employees. The Pleasant Grove Fire Department is staffed by twelve full-time firefighters who are supplemented by 4 volunteers. Thirteen of these firefighters are also trained as paramedics. The Department operates two 1250 gallon/minute pumpers, a truck company, a reserve engine and a rescue unit.

18. Pleasant Grove students attend Jefferson County public schools, all of which, however, are located within the town's boundaries. Pleasant Grove Elementary had an enrollment of approximately 900 students as of the most recent available figures, as did the combined Junior High and High School. There are four private and parochial schools in Pleasant Grove as well. See Exhibit 2.

19. As to relative size and proximity, Pleasant Grove's population is 3.2% of that of Birmingham. See Ada, Newcastle and Watonga, Oklahoma, supra and Scotland Neck and Pinetops, North Carolina supra. Pleasant Grove is located approximately 16 km from Birmingham with intervening populated areas. The proposed transmitter site is located 32 km from Birmingham's center city coordinates and the 70 dBu contour will cover less than 52.4% of the Urbanized Area. The proposed net gain in population of 129,457 persons and area of 2,285 sq. km. is in the public interest. See Figure 3. The loss area contains at least five aural services. See Figures 4 & 5.

III. Station WRTR(FM), Tuscaloosa/Moundville, Alabama

A. Technical Compliance

20. In order to upgrade Station WENN at Pleasant Grove to Channel 288C3, Station WRTR at Tuscaloosa must change channels, relocate its transmitter site and change its community of license to provide a first local service to Moundville, Alabama. See Figures 6 & 7. In addition, a site relocation and change in community of license is required for Station WKXM, Winfield, Alabama which is discussed herein. Station WRTR is also owned by Clear Channel. Therefore, by virtue of this proposal, Clear Channel hereby agrees to relocate its transmitter site, change channels and its community of license. Clear Channel will file an application consistent with this proposal should it be granted and will construct the facility. At the new site, Station WRTR will serve 24,576 fewer people in the same size area within its 60 dBu contour. See Figure 8. There are 5 aural services covering the loss area. See Figure 9.

B. Change in Community Of License

21. Clear Channel has determined that its existing Class A station at Tuscaloosa does not provide 70 dBu coverage to 100% of the community due to recent annexations and the unusual configuration of the annexed area to the north. The current 70 dBu coverage is 83.3% of Tuscaloosa.

In view of this deficiency, Clear Channel desires to change its community of license to provide Moundville, Alabama with its first local service.

22. Moundville is located outside the Tuscaloosa Urbanized Area. This proposal therefore represents a move from an Urbanized Area to a rural area. Therefore a Tuck showing is not required.

23. The use of Channel 290A at Moundville will conflict with the current use of Channel 288A at Tuscaloosa. See Figure 6. A first local service at Moundville is preferable (Priority 3) to a tenth local service at Tuscaloosa (Priority 4). With 10 local radio stations, Tuscaloosa (population 77,759) will not be deprived of local service.

24. Moundville, Alabama fully satisfies the FCC definition of “community” for allotment purposes. The town had 1348 residents as of the 1990 Census. It is not part of any urbanized area. It is governed by its own elected mayor and five town council members, who serve four-year terms and who have independent taxing authority. According to the Moundville Mayor’s Office, the town government provides fire protection with 22 volunteer firefighters, and police protection with 6 full-time officers. The town provides additional services through its Water, Public Works, and Parks and Recreation Departments. Residents can obtain local news by subscribing to the weekly *Moundville Times*. The town’s students attend Hale County Public Schools, with grades K-6 attending Moundville Elementary, and grades 7-12 attending Hale County High School. The town has its own zip code (35474), public library, and airport. Residents can obtain medical care from any of several doctors who practice in the town. See Exhibit 3.

25. As shown in the attached exhibit, there are number of small businesses located in Moundville, including several that identify with the town by including “Moundville” in their names, including: Moundville Auto Repair, Moundville Cabinet Shop, Moundville Hardware, Moundville Styling Salon, and Moundville Telephone Company. See Exhibit 3.

26. The preeminent cultural attraction in Moundville is the Moundville Archaeological Park, a 320 acre national historic landmark that preserves 26 pre-historic Native American burial mounds. The park features camping and a nature trail, as well as the Jones Archeological Museum, which features exhibits on the culture of Native Americans that include artifacts excavated from the site. The Park is also home to the week-long Moundville Native American Festival each year during the first week of October. The Park also serves as the site for the Moundville Easter Pageant, which has traditionally been held annually. See Exhibit 3.

C. Station WKXM, Winfield/Brilliant, Alabama

27. The Joint Parties propose to relocate the transmitter site for Station WKXM at Winfield and change its community of license to Brilliant, Alabama as a first local service. See Figures 10 & 11. The licensee of Station WKXM, Winfield, Alabama has provided a consent statement for the change in community of license to Brilliant and the relocation of its transmitter site. See Exhibit 1. Clear Channel hereby affirms that it will reimburse the licensee for its expenses in making the required changes. In this regard, Clear Channel has entered into a reimbursement agreement with the licensee of Station WKXM for the expenses incurred in changing its transmitter site. At the new site, WKXM will serve 4,074 more people within the same size area. See Figure 12.

28. Brilliant, Alabama is not within any Urbanized Area. It fully satisfies the FCC definition of “community” for allotment purposes. The town had 751 residents as of the 1990 Census. It is not part of any urbanized area. It is governed by its own elected mayor and five town council members, who serve four-year terms and who have independent taxing authority. According to the Brilliant City Clerk, the city provides fire protection and rescue service with 24 volunteer firefighters, and police protection with 3 full-time and 1 part-time officers. The town provides its own water and owns its own well. Residents can obtain local news from the weekly *Journal-Record*,

which is published in nearby Hamilton and which covers Brilliant news. The city's students attend Marion County Public Schools, with grades K-6 attending Brilliant Elementary, and grades 7-12 attending Brilliant High. Brilliant has its own zip code (35548). Residents can obtain medical care from any of several doctors who practice in the area. See Exhibit 4.

29. There are number of small businesses and organizations located in Brilliant, including several that identify with the city by including "Brilliant" in their names, including: Brilliant Homes, Inc, Brilliant Tiber Mart, Brilliant Freewill Baptist Church, and Brilliant United Methodist Church. Brilliant's cultural attractions include the annual Fiddler's Convention, which is held each spring. See Exhibit 4.

IV. Station WQEN, Gadsden/Trussville, Alabama

A. Technical Compliance

30. As indicated in the attached Engineering Statement, Channel 279C1 can be reallocated from Gadsden to Trussville, Alabama at a new transmitter site provided Channel 280C2 is reallocated from Columbus, Mississippi to Okolona, Mississippi as discussed herein. See Figures 13 & 14. Clear Channel hereby states that it will file an application for a new transmitter site to serve Trussville should the Commission grant this proposal and will construct the facility, if its application is granted.

B. Change in Community of License

31. The attached channel study (Figure 13), demonstrates that the proposed site for Channel 279C1 at Trussville is mutually exclusive with its current use at Gadsden.¹ The new community, Trussville, currently has Station WENN, also licensed to Clear Channel, but Clear

1. Clear Channel's predecessor previously filed an application to upgrade from Channel 279C1 to Channel 279C at Gadsden in July, 1998 but has not received a favorable FAA determination for its proposed tower height (BMPH-980713IA). The application is still pending and will be dismissed if the rule making proposal is granted.

Channel is proposing to reallocate the station to Pleasant Grove, Alabama as a first local service in this Petition. Thus WQEN will be replacing the local service at Trussville and offering a better facility (Class C1 instead of Class A) at Trussville as part of this proposal. See e.g., Pauls Valley and Healdton, Oklahoma and Krum, Texas, 14 FCC Rcd 3932 (1999); Refugio and Taft, Texas, DA 00-494, released March 3, 2000. The new arrangement is preferable because Gadsden will continue to receive AM stations WAAX (570 kHz), WGAD (1350 kHz) and WMGJ (1240 kHz) and noncommercial educational FM Stations WSGN (91.5 MHz) and WTBB (89.9 MHz). As indicated, Trussville (population 8,260 (1990 U.S. Census)) will benefit from receiving a higher class channel than it currently has and will retain its local service from the same licensee. This will enable Station WENN to relocate to Pleasant Grove (population 8,458) and upgrade its facility to Class C3. The net effect of this new arrangement is to provide a first local service to Pleasant Grove which is larger than Trussville and is without local service while providing a much better facility at Trussville and retaining five local services at Gadsden (population 42,523).

32. The Commission also stated in Community of License, supra at 7096, that it was concerned with the potential migration of stations from underserved rural areas to well served urban areas. In making this determination, the Commission has relied on the Faye and Richard Tuck, 3 FCC Rcd 5374 (1988) factors. Here, since Trussville already has a local service, the Commission has already made a finding that the community has a need for such service which is being replaced by WQEN. Nevertheless, the Joint Parties provide the following information based on the Tuck factors. For the Commission to treat Trussville as an independent community a majority of the eight factors must favor a finding of independence. In this case, all eight factors unquestionably demonstrate Trussville's independence from Birmingham.

33. As set forth in Exhibit 5, the first non-native settler, William Truss, arrived in what is now known as Trussville in 1781. A farmer by trade, Truss chose to settle at this location because

of the fertile land surrounding this portion of the Appalachian Valley. Truss subsequently built a flour mill, a grist mill and a blast furnace. Despite Truss' efforts, Trussville never developed into an industrial center. Even so, the town flourished as one of the most prosperous agricultural communities in north Alabama before the Civil War. The town continued its growth and development with the construction of the Alabama-Chattanooga Railway in 1870.

34. In the 1930s, as part of the federal government's efforts to help the nation recover from the Great Depression, the Government Resettlement Administration built 261 residential dwellings in the area known today as "Cahaba Village." Also built were public utilities, paved streets, sewers and a sewage disposal plant, public buildings and schools. In 1947 the Federal Government sold the homes to private residents and on June 10 of that year, the Town of Trussville was incorporated. Ten years later, the town officially became a city and adopted Trussville as its official name. As shown below, the following facts plainly establish Trussville's independent identity under Tuck. See generally Exhibit 5.

- (1) *There are Sufficient Employment Opportunities in Trussville for its Residents, and a Substantial Percentage of Residents Work in Trussville.*

35. Trussville's business and industrial development is sufficient to employ a substantial proportion of the city's residents within its boundaries. In the words of Trussville Mayor Gene Melton:

[w]hile Trussville was previously considered a bedroom community, with a progressive City Council, a conscientious Planning and Zoning Board, and a dynamic Industrial Development Board, we have achieved a blend of quiet neighborhoods and a strong commercial and industrial base that has expanded at a complimentary pace in order to provide both quality retail facilities and broadened employment opportunities for our citizens.

According to the last available census data, of the over 3,973 working Trussville residents over the age of sixteen, 13.7% (546) worked in Trussville. See e.g., Coolidge and Gilbert, AZ, 11 FCC Rcd 3610 (1996) (13% worked in Gilbert). See Exhibit 5.

- (2) *Trussville is Served by a Local Newspaper, and has Other Media Available to Cover Its Local Needs and Interests.*

36. Based in Trussville, the *Cahaba Journal* publishes local news and events for the “Trussville, Clay and Chalkville areas.” Trussville has radio Station WENN(FM) which has served the needs of its residents separate from Birmingham but which will be moved to Pleasant Grove herein. See Exhibit 5.

37. There are several web sites dedicated to the interests of Trussville residents. The first, <www.trussville.org>, contains information about the history of the city and news about various municipal issues and events of interest to Trussville residents, as well as information about the different municipal services that the city provides. Second, Trussville residents operate a private community site, Trussville ALive (<www.trussvilleal.com>), which provides street addresses and telephone numbers for almost every public or private establishment in the city, broken down by category (*e.g.*, entertainment, churches, health and fitness, etc.) The Trussville Library also operates a site, <www.trussvillelibrary.com>, that provides children and adults the ability to search card catalogs from libraries throughout Jefferson County, as well as general information about the programs and schedules for the Trussville Library itself. See Exhibit 5.

- (3) *Trussville Residents Consider Their Community to be Separate from Birmingham.*

38. Despite its proximity to the Birmingham, Trussville has a well-established identity that is separate from that of the larger metropolitan area. Trussville has long had its own government, which has given residents substantial opportunities to participate in matters of local concern. Moreover, the size of Trussville population, the wide range of businesses and commercial opportunities available in the city, and the fact that Trussville provides all of its own municipal services, all suggest that the Trussville leaders and residents view their city as an independent entity that could and would survive on its own if Birmingham did not exist. See Exhibit 5.

(4) *Trussville has its Own Local Government and Elected Officials.*

39. The City of Trussville was incorporated in 1947. It is governed by a Mayor and a five-person City Council, all of whom are elected at large for four-year terms. The Mayor and each City Council member serve as the principal liaison for different municipal issues, like planning and zoning, parks and recreation, education and public safety. The city has an Industrial Development Board and a Planning and Zoning Board that provide guidance on municipal development issues. There are also offices that handle other municipal duties, like approval and inspection of construction plans, and the licensing of certain businesses. See Exhibit 5.

(5) *Trussville has its own Zip Code*

40. Zip code 35173 is associated exclusively with Trussville. See Exhibit 5.

(6) *Trussville has Numerous Commercial Establishments and its Own Health Facilities*

41. Trussville is the home of dozens of commercial establishments, including a variety of different businesses that identify with the community by using “Trussville” in their name: Skate Station of Trussville, Trussville Auto & Truck Repair, Trussville Frame & Gallery, Trussville Hair Co., Trussville Rock Haulers, and Trussville Swimming Pool.

42. Although Trussville does not have its own hospital, a number of private practitioners have based their practices in the city. Residents have access to general practitioners and family care specialists, as well as podiatrists and an orthodontist. See Exhibit 5.

(7) *Businesses Can Advertise to Trussville Residents Directly and Need Not Use the Birmingham Market.*

43. As noted above, businesses interested in reaching the residents of Trussville may do so other than by advertising in Birmingham media. They may advertise in the bi-weekly *Cahaba Journal*, or on Station WENN which will continue to operate there until WQEN takes its place. The

web site is dedicated to issues of community interest. Businesses can also participate in the Trussville Chamber of Commerce. See Exhibit 5.

(8) *Trussville Provides its Own Municipal Services; It Does Not Receive them from Birmingham*

44. The City of Trussville, and not Birmingham, provides all municipal services to Trussville residents. Trussville's Water Department handles the city's water and sewer services. Trussville Utilities, the city's gas utility, has a five-million gallon liquified natural gas facility that is capable of providing service at lower rates than in other areas. Trussville's Office of Community Development handles building inspections, and operates the Trussville Port Authority. See Exhibit 5.

45. The City operates its own police force of twenty-nine sworn officers and ten civilian employees. The city also operates its own fire department. See Exhibit 5.

46. Trussville students attend Jefferson County public schools. The District operates three elementary schools, two middle schools, a junior high, and two high schools. In addition to Trussville, Jefferson County public schools serve the communities of Clay, Hewitt, and Chalkville. The District also sponsors a community education program, and holds after-school programs to care for the children of working parents. See Exhibit 5.

47. As to relative size and proximity, Trussville's population 8,266 (1990 census) is 3.1% of that of Birmingham (population 265,968). This percentage is larger than that approved in other cases. See e.g., Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996) (0.9%); Scotland Neck and Pinetops, North Carolina, 10 FCC Rcd 11066 (1995) (3.1%). Trussville is located approximately 21 km from Birmingham's center city coordinates. Traditionally these factors have less significance than evidence of independence. See e.g., Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). The proposed 60 dBu service area will result

in a net loss in population of 102,955 persons with no change in the size of the coverage area. See Figure 15. However, this loss is outweighed by the substantial gains in population as part of the overall proposal. The current coverage area will continue to receive 5 aural services. See e.g., Atlantic and Glenwood, Iowa, 10 FCC Rcd 3160 (1995) and Figures 16 & 17.

C. Station WACR-FM, Columbus/Okolona, Mississippi

48. In order to reallocate Channel 279C1 for Station WQEN from Gadsden to Trussville, Station WACR-FM, Columbus, must also relocate. The licensee, T & W Communications, Inc. ("T&W"), has agreed to relocate to Okolona (population 3,267) and provide that community its first local service at a new transmitter site. According to the attached channel study, Channel 280C2 can be allotted to Okolona and provide 70 dBu coverage to the community (Figures 18 & 19). The licensee of WACR has agreed to relocate its transmitter site and serve Okolona. See Exhibit 1. Clear Channel and T & W have entered into an agreement whereby Clear Channel will reimburse T & W for its expenses in relocating its transmitter site. Clear Channel hereby states that it will reimburse WACR for its expenses as required by Commission policy. Circleville, Ohio, 8 FCC 2d 159 (1967).

49. Okolona is deserving of a first local service (Priority 3) whereas Columbus (population 23,799) has six local services - - AM Stations WACR (1050 kHz), WJWF (1400 kHz), FM Stations WACR-FM (103.9 MHz), WMBC (103.1 MHz), WKOR-FM (94.9 MHz) and noncommercial educational FM Station WMUW (88.5 MHz).

50. Okolona fully satisfies the FCC definition of "community" for allotment purposes. The town is not part of any urbanized area. As set forth in Exhibit 6, Okolona has an elected town counsel and mayor, who oversee the operations of the Okolona Police Department and the Okolona Fire Department. Municipal services are provided by the Okolona Electric, Water and Street Departments. These services are funded by taxes paid by Okolona residents. Okolona has its own

post office and zip code (38860). The town has its own weekly newspaper, the *Okolona Messenger*, and is served by the Carnegie Public Library. The Okolona Municipal Separate School District operates an elementary school and high school for the town's children, as well as a vocational center for continuing education. The town has its own hospital, as well as the 66-bed Shearer Richardson Memorial Nursing Home, and Gilmore Health System, Inc. operates a private clinic in the town as well. There are more than 20 churches in the town. The town has its own municipal airport. See Exhibit 6.

51. Okolona has a vibrant business community, led by the Okolona Area Chamber of Commerce. The following are some of the dozens of businesses that operate in the town: the Okolona Auto Co., the Okolona Beverage Co., the Okolona Drug Co., Okolona Merchandise Liquidator, Okolona Truck Leasing, and the Okolona Funeral Home. See Exhibit 6. Thus, Okolona is a viable community deserving a first local service.

52. At the new transmitter site location, WACR will provide additional 60 dBu service to 90,879 persons in the same size coverage area (See Figure 20). The loss area will continue to receive at least 5 aural services. See Figures 21 & 22.

V. Station WKSJ, Pulaski, Tennessee/Ardmore, Alabama

53. Pulaski Broadcasting Inc. ("PBI"), licensee of Station WKSJ(FM), Pulaski, Tennessee, joins in this petition, to propose an upgrade of its station from Channel 252A to Channel 252C1 and a change in community of license to Ardmore, Alabama. PBI has provided a consent statement whereby it indicates its interest in upgrading its facility and changing its community of license as part of this proceeding. PBI states that it will file an application to implement the upgrade if granted and construct the facility. In order to upgrade Station WKSJ as proposed, it is necessary to substitute Channel 278A for Channel 252A at Scottsboro, Alabama as discussed herein. See Figure 23. This latter substitution can only be accomplished if Channel 279C1 is reallocated as

proposed from Gadsden to Trussville, Alabama. Due to the interrelationship of the proposals it is appropriate to consider the WKSR upgrade in this proceeding.

A. Technical Analysis

54. Channel 252C1 can be allotted to Ardmore, Alabama at a new transmitter site in compliance with the Commission's technical rules provided the channel substitution is made at Scottsboro. See Figures 23 & 24. PBI states that it will file an application at a new transmitter site for Channel 252C1 if the allotment is granted and will construct the facility if authorized to do so. See Exhibit 1.

B. Change in Community of License

55. As indicated in the channel study, Figure 23, Channel 252C1 at Ardmore is in conflict with the current use of Channel 252A at Pulaski, Tennessee. The proposal will provide a first local service (Priority 3) to Ardmore (1,090 population (1990 U.S. Census)) whereas Pulaski (population 7,895) will retain local service from full-time AM Station WKSR (1420 kHz) (Priority 4). Thus, the proposal will result in a preferential arrangement of allotments.

56. Although Ardmore is not located in an Urbanized Area, the proposed 70 dBu contour will cover more than 50% of the Huntsville and Decatur, Alabama Urbanized Areas. Thus, a Tuck showing is provided.

- (1) *There are Sufficient Employment Opportunities in Ardmore for its Residents, and a Substantial Percentage of Residents Work in Ardmore.*

57. There are a sufficient number of businesses located in Ardmore that residents of the town need not go to Huntsville or Decatur for employment. These employers range from larger companies like the Ardmore Telephone Company, Ardmore Aviation, and the L & S Food Market to smaller businesses like Wooten's Frame & Body Shop, Smith's Upholstery, Hodges Cabinet Shop, Inc., and Blondie's Beauty Shop.

58. Moreover, according to the last available census data, of the roughly 450 working Ardmore residents over the age of sixteen, 21.1% (96) worked in Ardmore. In addition, of the 360 residents who work outside of the town, fewer than half (179, or 39.2% of the town's workers) worked in either the Decatur or Huntsville MSA. The remaining 40.0% of Ardmore's workers held jobs across the state line in Tennessee, or in other municipalities in or near Limestone County. See Exhibit 7.

(2) *Ardmore is Served by Its Own Local Newspaper.*

59. The *Your Community Shopper* weekly newspaper, published in Ardmore by Stagner Publications, has 4,000 paid subscribers.² Both the print version of the *Shopper*, as well as the *Shopper's* Internet site, provide news and sports of interest to Ardmore residents. The *Shopper's* website carries comprehensive listings of area meetings and events. The paper also contains local classified advertisements and a society page. See Exhibit 7.

(3) *Ardmore Residents Consider Their Community to be Separate from Decatur and Huntsville.*

60. Ardmore has a well-established identity that is separate from that of Huntsville and Decatur. The town is uniquely situated across two states, Alabama and Tennessee, and four counties, Limestone, Alabama, Madison, Alabama, Giles, Tennessee, and Lincoln, Tennessee. Ardmore, Alabama has always had its own government, which has given residents substantial opportunities to participate in matters of local concern. Moreover, the businesses and commercial opportunities available in Ardmore, and the fact that all municipal services are self-provided, all suggest that the

2. According to the *Your Community Shopper* web site, "[a]lthough the name *Shopper* seems to imply that the paper is distributed free and contains only advertising, *Your Community Shopper* is a legitimate newspaper of general news in the four county two state area it serves."

Ardmore leaders and residents view their city as a separate entity that could and would survive on its own if Decatur and Huntsville did not exist. See Exhibit 7.

(4) Ardmore Has its Own Local Government and Elected Officials.

61. The City of Ardmore is governed by a Mayor and five City Council members, who are elected to four-year terms. The Mayor and Council oversee the provision of all municipal services. The town employs seven full-time workers. Ardmore citizens can also participate in municipal affairs through town Planning & Development Commission and Industrial Board. See Exhibit 7.

(5) Ardmore has its own Zip Code

62. Zip code 35739 is associated exclusively with Ardmore. See Exhibit 7.

(6) Ardmore has Numerous Commercial Establishments, and is Not Dependent on Decatur or Huntsville for Medical Care

63. As mentioned above Ardmore is the home of dozens of commercial establishments, including a variety of different businesses that identify with the community by using “Ardmore” in their name: the Ardmore Telephone Company, Ardmore Aviation, Ardmore Cabinet Shop, Ardmore Aviation, and Ardmore Video.

64. Although Ardmore does not have its own hospital, residents typically use the Athens-Limestone Hospital in Athens, Alabama, or the Columbia Hillside Hospital in Pulaski, Tennessee, both of which are twice as close to Ardmore as any of the hospitals in Decatur or Huntsville. See Exhibit 7.

(7) Businesses Can Advertise to Ardmore Residents Directly and Need Not Use Media from the Decatur or Huntsville Markets.

65. As noted above, business interested in reaching the residents of Ardmore can do so through the *Your Community Shopper* newspaper. See Exhibit 7.

- (8) *Ardmore Provides its Own Municipal Services; It Does Not Receive them from Decatur or Huntsville.*

66. The town of Ardmore, and not Decatur or Huntsville, provides all municipal services to Ardmore's residents. Ardmore has its own police department, fire department, Water Works and Sewer Board, and its own Municipal Court. The Ardmore Police Department has 6 sworn officers and 4 civilian employees.

67. There are ten churches within the Ardmore, Alabama town limits, including the First Baptist Church of Ardmore and the Piney Grove Baptist Church.

68. Approximately thirteen hundred Ardmore students from kindergarten through Grade 12 attend Ardmore High School. The town maintains the school, which also accepts tuition students from Ardmore, Tennessee. Ardmore, Alabama does not have its own library, but residents can simply cross the state line and visit the library located in Ardmore, Tennessee. See Exhibit 7.

69. As for relative size, the population of Ardmore is 0.6% of that of Huntsville (population 159,789) and 2.2% of that of Decatur (population 48,761). Ardmore is located 37.6 km from Huntsville and 44.6 km from Decatur.

70. The proposed upgrade from Class A to C1 at the new transmitter site will result in a net gain in population for 696,884 persons and in 60 dBu coverage area within 13,900 more sq. km. There will be no loss area. See Figure 25.

C. Station WKEA, Scottsboro, Alabama

71. In order to allot Channel 252C1 to Ardmore, Alabama, Channel 252A must be deleted from Scottsboro. According to Figure 26 of the attached Engineering Statement, Channel 278A can be substituted at the WKEA's licensee's current site provided Station WQEN, Gadsden, relocates to Trussville as proposed earlier. The licensee of Station WKEA has provided a consent statement for the change in channels and indicates it will file an application to implement the channel